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UNITED STATES DISTRICT COURT
STATE OF UTAH NORTHERN DIVISION

GET AWAY TODAY.COM, INC. (a

Utah Corporation),

Plaintiff,

vs.

NameMedia, Inc. (aka YesDirect,

Inc.), (aka BuyDomains

Holdings, Inc.), (dba

BuyDomains.Com), a Delaware

Corporation, and Rare Names,

Inc. a Delaware Corporation,

Robert J. Davis, Richard

DeSilva, Kelly P. Conlin,

Jeffrey S. Bennett, Brian D.

Lucy, Martin J. Mannion,

individuals and John Does 1 -

10.

Defendants.

COMPLAINT

Case: 1:10cv00112

Assigned To : Sam, David

Assign. Date : 7/13/2010

Description: Get Away Today v.

BuyDomains et al.

Jury Trial Demanded

Comes now the Plaintiff by and through legal counsel and
complains of Defendants as follows:

Nature and Basis of Action

This is an action for trademark, trade-dress, trade-name infringement, false advertising and dilution under provisions of 15 U.S.C. §1125(a) ("Lanham Act") and 15 U.S.C. §1125(d) (Cyberpiracy"), under provisions of Utah Code Annotated §70-3a et seq., ("Trademarks & Trade-names"), and common law trademark, trade-name infringement, trademark, trade-name dilution, unfair competition, false advertising, and conversion.

Parties

The Plaintiff is a Utah Corporation engaged in commerce in the State of Utah and on the world wide web. The Defendants are corporations chartered in the State of Delaware, with foreign registrations in the State of Massachusetts, and the District of Columbia doing business on the world wide web and throughout the United States; and are individuals believed to reside outside the State of Utah, doing business on the world wide web throughout the United States and within the State of Utah.

Jurisdiction

The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and §1338 and has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a).

Venue

Venue is proper in this District Court pursuant to 28 U.S.C. §1391(b)(2) and (d).

Statement of Facts

1 1. Plaintiff, a Utah Corporation, currently headquartered in
2 Ogden, Utah commenced business operations in the travel industry
3 in 1990.

4 2. Plaintiff originally established its' business operations
5 under the trade-name of Get-Away Today, Inc. and registered this
6 name as its' corporate name with the State of Utah.

7 3. Throughout the history of the company, the company has been
8 known in the travel industry by the mark 'Get Away Today.'

9 4. Plaintiff is also known in the industry under the name of Get
10 Away Today Vacations.

11 5. In 2004 Plaintiff filed articles of amendment with the State
12 of Utah officially changing the corporate name of Get-Away
13 Today, Inc. to Get Away Today Vacations, Inc. Plaintiff amended
14 its corporate name a second time by filing with the State of
15 Utah on August 30, 2008, changing the name to Get Away Today.Com
16 Inc.

17 6. Plaintiff through its continued business operations has
18 actively and continuously provided services in the travel
19 industry establishing its identity in the industry and becoming
20 well known as a provider of vacation travel to Disneyland, Sea-
21 World, Southern California, and other destinations.

22 7. As a virtue of Plaintiff's daily work efforts the words Get
23 Away Today, and its' derivatives, have come to identify
24 Plaintiff, its reputation and source of services; resulting in
25 industry acknowledged name recognition, common law trademark,
26 trade-dress, trade-name rights and goodwill.

1 8. Plaintiff has expended considerable time, efforts and funds
2 in marketing, promoting and advertising its services under the
3 name Get Away Today and its derivatives. Through these efforts
4 the name Get Away Today has become a known source of vacation
5 travel.

6 9. In 2007, the Plaintiff brought an action against the
7 defendants in the United States District Court of the State of
8 Utah, Northern Division; Case No. 07-cv-141.

9 10. This case addressed the issue of the defendant's use of the
10 domain name www.getawaytodayvactions.com. This case was settled with
11 defendant relinquishing the particular URL registration back to
12 the Plaintiffs.

13 11. Defendants are now using the domain name www.getawaytoday.net.
14 The defendants are using this domain name in an effort to both
15 sell the domain name and derive profits from it through
16 advertising of travel service.

17 12. Defendants have caused the URL www.getawaytoday.net to be used
18 in conjunction with a website that plays off the goodwill,
19 reputation, trademark, trade-dress, trade-names, marketing, and
20 promotion materials of the Plaintiff.

21 13. Defendants do not independently provide any travel services
22 through said web site rather Defendants have caused said website
23 to link to other providers of travel services.

24 14. The Corporation and its actions are only instruments of the
25 individual managing and directing them. As such the acts of the
26

1 corporate decisions are the summation of the direction of the
2 individuals.

3 15. Defendants have used a series of corporate entities, and
4 assumed names to register hundreds of URL's on the World Wide
5 Web. In so doing, defendants attempt to hold legitimate
6 companies hostage in order to force them to buy back their
7 corporate identities from the defendant.

8 16. Defendants have marketed and attempted to resell the URL
9 www.getawaytoday.net.

10 17. The actions of the individual Defendants in using the URL
11 www.getawaytoday.net to improperly benefit from the trademark,
12 trade-dress, trade-name, goodwill, reputation, marketing and
13 promotional efforts of the Plaintiff have been intentional and
14 willful constituting bad faith.

15 18. The ongoing use of the URL www.getawaytoday.net by the
16 Defendants serves as a method in commerce to cause confusion and
17 mistake for those seeking the services of Get Away Today.Com in
18 the travel industry; further providing a platform to mislead as
19 to the origin and source of services, dilute the identify of Get
20 Away Today.Com and to divert consumers seeking to use the
21 services and products of Get Away Today.Com.

22 19. All defendants, individually and collectively, jointly and
23 severally are liable for these acts.

24 **COUNT I**

25 **TRADEMARK & TRADENAME INFRINGEMENT**

22. Plaintiff hereby incorporates paragraphs 1 through 21 above by reference in Count I as if fully set forth.

23. The obtaining and use of the URL www.getawaytoday.net by the Defendants constitutes the use in commerce of a word, term, name, or symbol that is likely to cause confusion, or to cause mistake, or to deceive as to origin the services and products of the Plaintiff in violation of 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A).

24. Plaintiffs demand a judgment against the Defendants and ask the Court to award the relief specified in the "Relief Requested" section at the end of this Complaint or other relief that the Court deems proper.

COUNT II

COMMON LAW & STATE LAW TRADEMARK & TRADE-NAME INFRINGEMENT

25. Plaintiff hereby incorporates paragraphs 1 through 21 above by reference in Count II as if fully set forth.

26. Defendants' conduct in obtaining and using the URL www.getawaytoday.net constitutes trademark and trade-name infringement under the common law of the State of Utah; and Utah Statutes, §70-3a-104.

26. Plaintiffs demand a judgment against the Defendants and ask the Court to award the relief specified in the "Relief Requested" section at the end of this Complaint or other relief that the Court deems proper.

COUNT III

COMMON LAW & STATE LAW TRADEMARK & TRADE-NAME DILUTION

& INJURY TO BUSINESS REPUTATION

27. Plaintiff hereby incorporates paragraphs 1 through 21 above by reference in Count III as if fully set forth.

28. Defendants have used the URL www.getawaytoday.net in such a manner as to dilute a trademark and trade-name of the Plaintiff; further injuring the goodwill and business reputation of the Plaintiff in violation of the common law of the State of Utah and Utah Statutes §70-3a-403.

29. Plaintiffs demand a judgment against the Defendants and ask the Court to award the relief specified in the "Relief Requested" section at the end of this Complaint or other relief that the Court deems proper.

COUNT IV

CYBER-PIRACY

30. Plaintiff hereby incorporates paragraphs 1 through 21 above by reference in Count IV as if fully set forth.

31. Defendants have intentionally and willfully acted to register and obtain control of the URL www.getawaytoday.net; further trafficking in the lines of business of the Plaintiff through said URL. The acts of Defendants constitute bad faith and are in violation of 15 U.S.C. §1125(d).

32. Plaintiffs demand a judgment against the Defendants and ask the Court to award the relief specified in the "Relief Requested" section at the end of this Complaint or other relief that the Court deems proper.

COUNT V

UNFAIR COMPETITION

33. Plaintiff hereby incorporates paragraphs 1 through 21 above by reference in Count V as if fully set forth.

34. Defendants' actions in using the URL www.getawaytoday.net have and continue to unfairly use and compete in commerce using the goodwill, reputation, marketing and promotions of the Plaintiff to divert business, customers, clients and the general public from the Plaintiff to the Defendant and parties associated with the defendant.

35. Plaintiffs demand a judgment against the Defendants and ask the Court to award the relief specified in the "Relief Requested" section at the end of this Complaint or other relief that the Court deems proper.

COUNT VI

FALSE ADVERTISING

36. Plaintiff hereby incorporates paragraphs 1 through 21 above by reference in Count VI as if fully set forth.

37. Defendants' use of the URL www.getawaytoday.net constitutes false advertising and designation of origin under section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A), as this prior and continued use of designation of services is likely to cause confusion among consumers.

38. Plaintiffs demand a judgment against the Defendants and ask the Court to award the relief specified in the "Relief Requested" section at the end of this Complaint or other relief that the Court deems proper.

COUNT VII

CONVERSION

39. Plaintiff hereby incorporates paragraphs 1 through 21 above by reference in Count VII as if fully set forth.

40. Defendant has obtained and registered the URL www.getawaytoday.net.

41. Said URL constitutes the corporate name and identity of the Plaintiff; which name and identity constitute personal property of the Plaintiff.

42. Through the registration of said URL Defendants have converted for their own use the name and identity of the Plaintiff.

43. The actions of the Defendants have been intentional and willful.

44. Defendants are liable to the Plaintiff under the common law of the State of Utah for conversion of the property of the Plaintiff.

45. Plaintiffs demand a judgment against the Defendants and ask the Court to award the relief specified in the "Relief Requested" section at the end of this Complaint or other relief that the Court deems proper.

RELIEF REQUEST

46. Plaintiff prays for relief and judgment against the Defendants on each and every count in this Complaint:

1 (1) Enjoining and restraining Defendants, its agents,
2 servants, employees, attorneys and all persons in concert or
3 participation with any of them from using the URL
4 www.getawaytoday.net; and

5 (2) Awarding the control and registration of the URL
6 www.getawaytoday.net to the Plaintiff; and

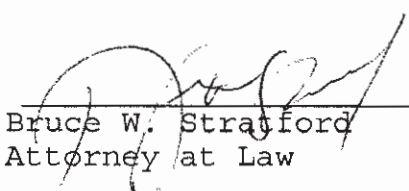
7 (3) With respect for the unlawful conduct of Defendants
8 resulting from infringement or dilution, unfair competition and
9 cyber-piracy under the Lanham Act that recovery be granted
10 pursuant to 15 U.S.C. §1117; including attorneys fees and costs
11 of court; and

12 (4) With respect to damages for the unlawful conduct of
13 Defendants resulting from the statutory Trademark and Trade-name
14 laws of the State of Utah that recovery be granted pursuant to
15 70a-3a-404 Utah Code Annotated; including attorneys fees and
16 costs of court; and

17 (5) With respect to damages suffered from Defendants
18 unlawful conduct under common law the awarding of compensatory,
19 and punitive damages, attorney fees, and costs of court in an
20 amount to be determined at the time of trial; and

21 (6) Any and all other relief that the Court deems just and
22 equitable.

23 Dated this 13 day of July, 2010

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25 
26 Bruce W. Stratford
Attorney at Law